NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

June 7, 2004

Dear Senator:

The U.S. Senate and the U.S. House of Representatives have approved legislation to reauthorize the Individuals with Disabilities Education Act (IDEA), and both bodies are now preparing for the conference process. It is our understanding that efforts are being made to negotiate agreements on some of the more critical issues prior to a conference. As representatives of the state entities responsible for the implementation of IDEA, we urge you not to enter into "pre-conference agreements" concerning our priority issues: monitoring and enforcement, teacher quality, data collection requirements and funding.

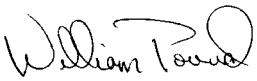
The Senate bill, although a thoughtful and well-intentioned attempt at reform that includes many positive improvements, has several major issues that need to be addressed during the conference process. Senators should not be bound to support imperfect language by "pre-conference agreements." Instead, decisions regarding these priorities should be decided in an open conference with significant review and input from all relevant stakeholders.

Our members, who include state legislators, superintendents and commissioners of education, members of state boards of education and the state directors of special education, do not believe the Senate reauthorization process has adequately heeded the advice of experts in special education. Although state representatives, administrators, parents and educators have all offered significant feedback on the Senate proposal, thus far, few changes have been allowed; no amendments were allowed during the committee process, and only six pre-determined amendments were in order during the Senate floor debate. The IDEA is a complex law that requires significant cooperation from all of the stakeholders, but particularly state officials, to operate effectively to ensure positive outcome for all students with disabilities. Making critical decisions regarding the final language of the bill behind closed doors without, at some point, involving those charged with the responsibility for implementation may jeopardize our ability to support the final conference committee bill.

Attached is a list of our specific reauthorization issues that must be addressed by the Conference Committee. These are critical issues that will have a tremendous impact on

the ability of states to implement the IDEA. We ask that you consider our views and ensure that if the reauthorization of IDEA moves forward, that it does so in an inclusive manner.

Sincerely,



William T. Pound
Executive Director
National Conference of State Legislatures

Brenda Welburn
Executive Director
National Association of State Boards of Education

G. Thomas Houlihan
Executive Director
Council of Chief State School Officers

Bill East, Ed.D.
Executive Director
National Association of State Directors of Special Education

Organization Contact Information:

The National Conference of State Legislatures
David Shreve, david.shreve@ncsl.org, 202-624-8187

The National Association of State Boards of Education
David Griffith, davidg@nasbe.org, 703-684-4000, ext. 107

The Council of Chief State School Officers
Jordan Cross, jcross@ccsso.org, 202-336-7023

The National Association of State Directors of Special Education
Nancy Reder, nreder@nasdse.org, 703-519-3300, ext. 334

IDEA REAUTHORIZATION ISSUES OF MAJOR CONCERN TO STATE ORGANIZATIONS THAT MUST BE ADDRESSED BY A HOUSE-SENATE CONFERENCE COMMITTEE

The National Conference of State Legislatures (NCSL)
The National Association of State Boards of Education (NASBE)
The Council of Chief State School Officers (CCSSO)
The National Association of State Directors of Special Education (NASDSE)

1. The definition of a highly qualified special education teacher

The definition of a "highly qualified special education teacher" has not been adequately addressed in either the House or Senate bills. The Senate bill defines highly qualified in the context of the environment in which the special education works, but fails to recognize the frequency with which special education teachers work in more than one educational environment, e.g., elementary and secondary schools. Thus, the Senate language would require many special education teachers to meet several different standards for special education teachers. Without a major re-writing of this definition, special education teachers will be required to obtain credentials far beyond those required of other teachers, a situation that may quickly result in special education teachers leaving the field altogether. At a time when there are significant shortages of special educators, this impact could result in catastrophic personnel shortages. In addition, it must be clarified that special education teachers will only be held to the teacher quality standards in IDEA and not the core content standards already created by the No Child Left Behind Act. Our organizations have drafted specific language to ensure that students with disabilities have unfettered access to highly qualified teachers while not holding special education teachers to an unnecessarily onerous qualification standard. For more information on our proposal, please call or email any of the contacts listed below.

2. Remove the caps on the state administrative set-asides for state administrative activities and state mandatory activities

The state administrative fund and the state activities fund have both been frozen since 1997. The failure to increase funding has prevented many states from engaging in additional activities that would aid in delivering services, overseeing statewide reform, and enforcing federal requirements. The Senate and House bills would add an additional strain to state budgets by adding significant new state responsibilities without funding to pay for the new activities.

Examples of these new responsibilities include the increased personnel training that the new aspects of the law will require. There are major changes in the proposed law that address the identification of students with learning disabilities, changes to the discipline procedures and new monitoring and enforcement provisions. In addition, the Office of Special Education Programs recently changed its biannual reporting requirements to annual ones. State departments of education have limited numbers of personnel to conduct all of these activities.

3. Monitoring and Enforcement

In the Office of Management and Budget's Statement of Administration Policy (SAP) on S. 1248, the Administration strongly opposed "the provision that requires an unworkable and mechanistic enforcement system that would automatically trigger a series of State sanctions" and urged the deletion of these provisions. We concur with the recommendation in the SAP, and strongly object to the Senate version of Section 616, "Monitoring, Technical Assistance and Enforcement." As passed by the Senate, the bill would require the Secretary of Education to determine whether a state shows "significant lack of progress" or is in "substantial noncompliance" or "egregious noncompliance." These terms are not defined in the bill, leaving states uncertain as to what is required to be in compliance and could have the opposite effect from the intended one – that is, less monitoring and enforcement by the state due to a loss of funds to conduct these activities. We urge that this section be rewritten to focus on the achievement of outcomes through the development of a sound remedial plan, the implementation of which is overseen by the Department of Education.

In a separate provision, the Senate bill also requires states to fund protection and advocacy agencies to provide legal assistance to parents that may result in the filing of lawsuits against state and/or local education agencies. This language must be deleted in the Conference Report. It is an inherent conflict of interest for states to fund an organization to provide legal services to parents to sue the agency that is paying for the legal advice. Protection and advocacy agencies have other sources of funding to assist parents with their legal needs.

4. State funding of risk pools should be optional

In light of the variability among states that currently provide support to LEAs for their high-cost students with disabilities, states should have flexibility to implement risk pools. Currently, approximately one-half of the states have mechanisms in place, either by law or regulation, that help pay for the costs associated with delivering high-cost services to students with disabilities. Furthermore, the Senate language includes an unworkable formula for calculating costs. The establishment of state-funded risk pools should remain optional.

5. Data collection

While both the House and Senate bills have new data collection requirements, neither bill takes into account the cost to states for upgrading their information systems to collect the new data, nor do they allow for any phasing in of the data collection activities to allow states time to develop such systems. We urge that funding be included to cover the cost of state enhancement of information systems as was done for the NCLB. Further, data collection reporting requirements should be phased in, allowing states and LEAs time to enhance their collection and reporting systems. In addition, new data collection requirements should be postponed indefinitely until such time as the Department of Education can develop appropriate data templates for the states for all of the new data collection requirements. The data collection requirements are particularly troublesome in light of the fact that funding for state-level administrative activities is frozen at FY 2003 levels and only allows increases based on inflation for state-level activities after FY 2005.

6. Preemption of State Authority

During the 1997 reauthorization of IDEA, Congress preempted the constitutional guarantee in the 11th Amendment of state sovereign immunity. Section 604 of the IDEA states that states shall not be immune to suit in federal court for violations of the IDEA. Coupled with language in the Senate bill in Section 616 that expands opportunities for litigation, this preemption will leave states open to ever increasing fiscal and legal costs. Claims under IDEA are best settled in state courts, which are closer to the issues being litigated and have a better understanding of state requirements. Further, state courts are better situated to oversee implementation of their judicial decisions. Section 604 should not be included in the Conference Report.